

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Use of Spectrum Bands Above 24 GHz For	)	GN Docket No. 14-177
Mobile Radio Services	)	
	)	
Establishing a More Flexible Framework to	)	IB Docket No. 15-256
Facilitate Satellite Operations in the 27.5-28.35	)	
GHz and 37.5-40 GHz Bands	)	
	)	
Petition for Rulemaking of the Fixed Wireless	)	RM-11664
Communications Coalition to Create Service	)	
Rules for the 42-43.5 GHz Band	)	
	)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90,	)	WT Docket No. 10-112
95, and 101 To Establish Uniform License	)	
Renewal, Discontinuance of Operation, and	)	
Geographic Partitioning and Spectrum	)	
Disaggregation Rules and Policies for Certain	)	
Wireless Radio Services	)	
	)	
Allocation and Designation of Spectrum for	)	IB Docket No. 97-95
Fixed-Satellite Services in the 37.5-38.5 GHz,	)	
40.5-41.5 GHz and 48.2-50.2 GHz Frequency	)	
Bands; Allocation of Spectrum to Upgrade	)	
Fixed and Mobile Allocations in the 40.5-42.5	)	
GHz Frequency Band; Allocation of Spectrum	)	
in the 46.9-47.0 GHz Frequency Band for	)	
Wireless Services; and Allocation of Spectrum	)	
in the 37.0-38.0 GHz and 40.0-40.5 GHz for	)	
Government Operations	)	

**PETITION FOR RECONSIDERATION OF THE RURAL LMDS LICENSEES**

Adams Telcom Inc. (“Adams”), Central Texas Communications, Inc. (“Central Texas”),  
E.N.M.R. Telephone Cooperative (“E.N.M.R.”), Louisiana Competitive Telecommunications,  
Inc. (“LCT”) and Pine Belt Communications, Inc. (“Pine Belt”) (together, the “Rural LMDS  
Licensees” or “Petitioners”), by their attorneys and pursuant to the rules of the Federal

Communications Commission (“FCC” or “Commission”),<sup>1</sup> hereby petition the Commission to reconsider its recent Report & Order in the above-captioned proceeding (“Order”).<sup>2</sup> Specifically, the Petitioners urge the Commission to reconsider subdividing Local Multipoint Distribution Service (“LMDS”) licenses into counties and imposing a performance requirement on each new license of July 1, 2024. Instead, as explained in greater detail herein, the Commission should either (1) allow incumbent licensees to retain their original geographic license size; or (2) allow incumbent licensees to meet the new substantial service requirements either by building out one (1) county within each existing Basic Trading Area (BTA) or by the same deadline imposed on new 28 GHz licensees.

## **I. INTRODUCTION AND BACKGROUND**

The Rural LMDS Licensees file this Petition out of their shared concern over the Commission’s action in the Order to break up existing rural BTAs into counties and impose a new performance requirement deadline of July 1, 2024 in each new 28 GHz block in each county.<sup>3</sup> As current LMDS/28 GHz license holders and having previously participated in the proceeding, the Rural LMDS Licensees are parties in interest to this proceeding and have adequate standing to file this Petition.<sup>4</sup> As discussed below, the Petitioners do not believe the

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<sup>1</sup> 47 C.F.R. § 1.429.

<sup>2</sup> *In the Matter of Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Report & Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, FCC 16-89 (rel. July 14, 2016). (“Order”). The Order was published in the Federal Register on November 14, 2016. *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, 91 Fed. Reg. 79,894 (Nov. 14, 2016).

<sup>3</sup> *See id.* at ¶ 120.

<sup>4</sup> 47 C.F.R. § 1.429(a).

Commission provided a satisfactory explanation for adopting a different license size for the incumbent LMDS licenses.<sup>5</sup>

When the FCC established LMDS in 1997, it was hailed as offering an opportunity for carriers to provide a new broadband wireless service that could compete with local exchange carriers and cable television systems offerings.<sup>6</sup> The Rural LMDS Licensees, whose licenses cover extremely rural areas, purchased LMDS licenses at competitive auction prices,<sup>7</sup> invested in constructing those licenses (in some cases multiple times using different equipment which was not always readily available),<sup>8</sup> and have complied with FCC rules and regulations, including meeting existing substantial service requirements for their licenses.<sup>9</sup> Since 2000, rural LMDS

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<sup>5</sup> See *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Specifically, the Petitioners do not accept the Commission's argument that it is appropriate to give other parties an opportunity to make use of the spectrum license they purchased if the incumbent licensees cannot meet after-the-fact build out requirements. See, *infra*, Section II.

<sup>6</sup> See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies For Local Multipoint Distribution Service and For Fixed-Satellite Services*, Second Report and Order, Order on Reconsideration and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545, 12553, ¶ 2 (1997).

<sup>7</sup> Collectively the Rural LMDS Licensees paid over Three Million, Three Hundred Fifty Thousand Dollars (\$3.35M) to purchase their licenses.

<sup>8</sup> Even today the Rural LMDS Licensees struggle with the lack of choice and availability in LMDS equipment for the 28 GHz band.

<sup>9</sup> The Rural LMDS Licensees use these licenses for point to point communications, generally to provide backhaul services for voice and broadband services. See Substantial Service filings filed by the Rural LMDS Licensees: Adams File No. 0005375659; Central Texas File Nos. 0005375659 and 0005218933; E.N.M.R. File Nos. 0005253330, 0005253328 and 0005253324; LCT File No. 0005223164; Pine Belt File Nos. 0005318669 and 0005318669.

licensees like the Petitioners have tried to make the nascent wireless service work in rural markets, with very limited success. Each have also struggled to build point-to-point and point-to-multipoint facilities, which ultimately has proven impractical given the characteristics of the spectrum and sparse population of the BTA license areas. Now, while the Petitioners applaud the Commission for attempting to make fifth generation (“5G”) services available in urban areas, there is currently no realistic 5G application using these licenses in rural areas.

## **II. INCUMBENT LMDS LICENSES SHOULD REMAIN BTAs**

In the Order, the Commission subdivides existing LMDS licenses into county-size licenses and disaggregates the 28 GHz band into two (2) separate channel blocks.<sup>10</sup> In response to existing licensees’ concern about the economic viability of building out certain counties, the FCC asserts that it would be appropriate to give other parties an opportunity to license and make use of the spectrum.<sup>11</sup> In addition, the FCC notes that existing licensees are “obtaining valuable new rights and they are keeping the same bundle of rights they had previously.”<sup>12</sup>

The Commission should reconsider its decision to break up incumbent 28 GHz licensees geographic license size.<sup>13</sup> This action will impose administrative burdens and costs to meet buildout requirements on incumbent licensees. Under the new rules that subdivide the licenses,

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<sup>10</sup> Order ¶¶ 35, 72.

<sup>11</sup> See Order ¶ 35.

<sup>12</sup> *Id.*

<sup>13</sup> While the Rural LMDS Licensees have previously advocated for smaller coverage areas, in this case, the licensees have already purchased and invested in BTA licenses and an after-the-fact division of those licenses would cause financial hardship for the Rural LMDS Licensees. In fact, in the instant proceeding, all parties disagreed with the county size licenses. See Order, Statement of Commissioner Michael O’Reilly at 278 (“licensing 28 GHz by counties as opposed to larger market areas, such as PEAs, has been rejected by almost everyone in the record.”).

each of the Rural LMDS Licensees will have an increased number of licenses to maintain.<sup>14</sup>

Incumbent licensees will now be forced to construct very rural portions of multiple counties within their licensed BTA – areas where providing 28 GHz band service that may not currently be economically feasible – or risk losing that portion of their BTA.<sup>15</sup> Forfeiting the county license would not be appropriate since the incumbent licensee should have the right to build out that county should it become economically viable to do so.<sup>16</sup>

Central Texas, for example, holds two LMDS BTA licenses in the 28 GHz band: BTA400 in San Angelo, Texas and BTA057 in Brownwood, Texas. Central Texas' territory spans 3,200 square miles with less than two customers per square mile. This extremely rural territory covers nineteen (19) counties. The Commission's action will divide Central Texas' two (2) licenses into thirty-eight (38) separate county licenses. Central Texas will now need to bear the additional administrative costs involved in maintaining that many licensees and be forced to meet performance requirements for all 38 new licenses despite having already met it for the 2 licenses it purchased. Installing infrastructure in the least populated counties within its BTA

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<sup>14</sup> Adams' one (1) BTA license will become twenty-two (22) licenses. Central Texas' two (2) BTA licenses will become thirty-eight (38) licenses. E.N.M.R.'s three (3) BTA licenses will become forty-eight (48) licenses. LCT's one (1) license will become fourteen (14) licenses. Pine Belt's two (2) BTA licenses will become eighteen (18) licenses.

<sup>15</sup> As the Commission acknowledges, it would be a hardship for incumbent licensees with terms concluding before 2020 to meet the new "rigorous" requirements for these bands at the end of their current license terms "because of the nascent state of technology." Order ¶ 219. For incumbent licensees in rural areas, the requirements would not just be rigorous but unachievable.

<sup>16</sup> Adams, Central Texas, E.N.M.R. and Pine Belt attended and participated in a July 7, 2016 Ex Parte by Nextlink. As incumbent licensees argued in that ex parte, reducing the size of the license reduces its value, and carriers should not be deprived of a valuable asset for which they have already paid and expended additional resources to construct. *See* Letter from Michele Farquhar, Counsel to Nextlink LLC and XO Communications, LLC, to Marlene H. Dortch, Secretary, FCC (filed July 8, 2016) (discussing a meeting between CCA and Johanna Thomas, legal advisor to Commissioner Jessica Rosenworcel).

would be a needless cost for Central Texas or any other party.<sup>17</sup> A rural county, however, may become populous in time. In such an event, the incumbent licensee should be able to exercise its rights to expand its network and build on the license in which it has invested. In fact, the rural incumbent carrier will be better suited to build in areas in or adjacent to its service areas if and when there is a business justification for such services.

The establishment of mobile rights in these rural areas will not outweigh the economic hardship imposed by these new buildout requirements. As the Commission acknowledges, it is acting very quickly on this new technology.<sup>18</sup> While the FCC's swift action is beneficial for deploying new services, the Rural LMDS Licensees urge the Commission to also heed the struggles of rural operators. To date, the Rural LMDS Licensees are unaware of any technologies that will accommodate mobile service in the 28 GHz band in rural areas. 5G service utilizing the 28 GHz band is still in an experimental phase, and it likely will take years for equipment manufacturers and carriers to deploy these services and the population to adopt them – especially in rural America. As is the case with any new wireless technology, the first markets to experience 5G will be the top urban markets.<sup>19</sup>

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<sup>17</sup> All of the Rural LMDS Licensees will face the same challenges. *See, supra*, note 14.

<sup>18</sup> Order at ¶ 1 (“To promote the deployment of these highly beneficial technologies, we are acting quickly – more quickly than most of our counterparts around the world”).

<sup>19</sup> LTE service, for example, is not yet ubiquitous throughout the Country. *See* Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Eighteenth Report, DA 15-1487, ¶ 38 (Dec. 23, 2015) (reporting that while over 80 percent of the U.S. population lived in areas with LTE coverage by at least four service providers, those areas only accounted for approximately 15 percent of the total land area of the United States.). *See also id.* ¶¶ 39 – 41 (discussing the coverage gap for wireless services between rural and non-rural populations). In addition, 5G technology requires short transmission paths and highly focused beams – both requirements of which are attractive to densely populated urban areas and non-conducive to the spread-out geography and smaller populations of rural areas.

**III. IF THE COMMISSION INSISTS ON DIVIDING THE LICENSES, THEN IT SHOULD ALLOW INCUMBENTS TO MEET PERFORMANCE REQUIREMENTS BY BUILDING OUT ONE COUNTY OR EXTEND THE DEADLINE.**

If the Commission will not reconsider subdividing the LMDS licenses, then it should allow incumbent LMDS licenses to meet new performance requirements by building out one (1) county within their existing BTA. As stated above, building out the most rural counties will be an extreme economic hardship on Rural LMDS Licensees, one that may not be immediately driven by demand. These rural counties are also unlikely to benefit from mobile or 5G services in the 28 GHz band. As discussed above, 5G technology is not ripe for application in rural areas. New licensees will have the benefit of understanding the benefits and limits to 5G technology and can choose which county licenses to purchase accordingly. Accordingly, incumbent licensees, who purchased licenses covering multiple counties, should be allowed to meet substantial service requirements by building out one (1) county within each existing BTA licensed area.

Alternatively, the Commission should allow more time for incumbents, at least until July 1, 2028, to meet the new buildout requirements. In the Order, the Commission establishes a ten-year license term for the new 28 GHz licenses. These new licensees will be awarded an expectancy for subsequent license terms if such licensees meet performance requirements.<sup>20</sup> Current licensees, however, will be required to fulfill the performance requirements by June 1, 2024.<sup>21</sup> If the Commission does not reconsider its decision to divide the 28 GHz licenses by county or allow incumbent licensees to meet performance requirements by building out one (1)

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<sup>20</sup> Order ¶¶ 176 – 177.

<sup>21</sup> See *id.* at ¶ 220.

county within their existing license area, then the Rural LMDS Licensees ask that, in the very least, the Commission allow incumbents to meet the new performance requirements at the same time as other new entrants in the band. Assuming that interested parties are able to bid on and receive new 28 GHz licenses by July 1, 2018, then their performance requirement deadline would not be until July 1, 2028. Incumbent licensees, who are essentially receiving new licenses, should be granted that same amount of time.

#### **IV. CONCLUSION**

The Rural LMDS Licensees respectfully request the Commission to reconsider its decision to reduce the size and value of their licenses and instead allow incumbent LMDS licenses to remain BTAs. If the Commission will not reconsider the size of the license, the Petitioners request that the Commission either allow incumbent licensees to meet performance requirement by building out one (1) county within their existing BTA area or extend the



performance deadline to July 1, 2028 (or the date that new 28 GHz licensees are required to meet performance requirements).

Respectfully submitted,

The Rural LMDS Licensees

A handwritten signature in dark ink, appearing to read "D. L. Herman, Jr.", with a long, sweeping horizontal flourish extending to the right.

By: \_\_\_\_\_  
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